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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,814	01/21/2004	Daniel S. Henry	12929.5006USC1	1001
23552	7590	08/18/2005	EXAMINER	
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			PRICE, CARL D	
			ART UNIT	PAPER NUMBER
			3749	

DATE MAILED: 08/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/761,814

Applicant(s)

HENRY ET AL.

Examiner

CARL D. PRICE

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 23-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 23-28 is/are allowed.
- 6) ☒ Claim(s) 29, 30, 32 is/are rejected.
- 7) ☒ Claim(s) 31 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10/27/04; 12/20/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION**Double Patenting**

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 28-32 are rejected under the judicially created doctrine of double patenting over claims 1-20 of U. S. Patent No. US006688302B2 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: The claims of the present application are broader in scope than the claims of U. S. Patent No. US006688302B2. Therefore, if allowed, the claims of the present application would be anticipated by the more narrowly defined invention of the claims of U. S. Patent No. US006688302B2.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claim 32: Rejected under 35 U.S.C. 102(b)

Claim 32 is rejected under 35 U.S.C. 102(b) as being anticipated by US00163678 (MERRILL).

US00163678 (MERRILL) shows and disclose method of adding fuel to a stove, a stove comprising:

- the stove body including at least a front wall (B);
- moving a baffle plate (M) of the stove from a substantially horizontal closed configuration (Figures 2, 5) to an open configuration (see figures 3, 8) (It is noted that both the open and closed configurations are substantially horizontal however applicants' claim does not specify the orientation of the "open configuration");

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- drawing heat and gases from the fire out through a by-pass pathway ((at P and G; figure 8) into a chimney of the stove;
- opening an access door (O) positioned at a top wall (i.e. – at B, O; the top front wall portion) of the stove;
- loading fuel through the door (i.e. – “The magazine is charged through a doorway, O, in front of eh stove, or by other convenient channel. Two plates , of which on, P, ids fixed, and the other one, Q, is movable, prevnt the coal dropping directly into the fire in the operation of charging the magazine”), past the baffle plate (M), and into the combustion chamber;
- moving the baffle plate into the substantially horizontal closed configuration; and
- closing the access door (i.e. – “Except while being charged, the magazine is closed at top by means of a flap or cover, M, having a handle, N, outside of the stove.”).

Claim 32: Rejected under 35 U.S.C. 102(b)

Claim 32 is rejected under 35 U.S.C. 102(b) as being anticipated by US002461068 (LOCKWOOD).

US002461068 (LOCKWOOD) shows and disclose method of adding fuel to a stove, a stove comprising:

- moving a baffle plate (19) of the stove from a substantially horizontal closed configuration to an open configuration (not shown; see figure 4)
- drawing heat and gases from the fire out through a by-pass pathway (18) into a chimney of the stove;
- opening an access door (15) positioned at a top wall of the stove;
- loading fuel through the door

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- moving the baffle plate into the substantially horizontal closed configuration; and
- closing the access door.

Claim 29: Rejected under 35 U.S.C. 102(b)

Claim 29 is rejected under 35 U.S.C. 102(b) as being anticipated by US002196467 (MASONICK).

US002196467 (MASONICK) shows and discloses a stove including:

- a body defining a combustion chamber,
- the stove body including at least a front wall (10) and a top wall (15) each defining an opening (50 and 41, respectively) for access doors therein;
- a chimney (24) in air flow communication with the combustion chamber; and
- baffle plate (46) disposed within the combustion chamber, the baffle plate being moveable from a closed configuration to an open configuration;
- wherein, when in the closed configuration, the baffle plate directs gases from the combustion chamber, through a first passage (21) defined at least in part by the front wall and the top wall (see figure 4) of the stove body, and into the chimney; and
- wherein, when the baffle plate is in the open configuration, the baffle plate directs gases from the combustion chamber, through a second passage (20), and into the chimney such that the gases do not exit the opening formed in either of the front wall and the top wall.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 29, 30, 32: Rejected under 35 U.S.C. 103(a)

Claims 29, 30 and 32 are rejected under 35 U.S.C. 103(a) as obvious over US00163678 (MERRILL) in view of US004856491 (FERGUSON ET AL).

US00163678 (MERRILL) shows and discloses the invention substantially as set forth in the claims with possible exception to:

- the stove body including at least a front wall and a top wall each defining an opening for access doors therein.

US004856491 (FERGUSON ET AL) teaches, form the same solid fuel burning heater field of endeavor as US00163678 (MERRILL), providing a the stove body including at least a

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front wall and a top wall each defining an opening for a front access door (28) and a top fuel loading door (21) therein, respectively.

In regard to claims 29, 30 and 32, for the purpose of a decorative or aesthetically pleasing view of the fire through a front loading door (see column 9, lines 48-60) and for providing a removable griddle surface on the top of the stove which also permits fuel loading access, it would have been obvious to a person having ordinary skill in the art at the time of applicant's invention to modify US00163678 (MERRILL) to include both front door and top loading access doors, in view of the teaching of US004856491 (FERGUSON ET AL).

Allowable Subject Matter

Claims 23- 28 are allowed.

Claim 31 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

See the attached USPTO form 892 for prior art made of record and not relied upon which is considered pertinent to applicant's disclosure.

USPTO CUSTOMER CONTACT INFORMATION

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CARL D. PRICE whose telephone number is (571) 272-4880. The examiner can normally be reached on Monday through Friday between 6:30am-3:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Monica S. Carter can be reached on (571) 272-4475. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Carl D. Price', is positioned above the printed name.

CARL D. PRICE
Primary Examiner
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cp